

114TH CONGRESS  
1ST SESSION

# H. R. 4097

To amend the Immigration and Nationality Act to provide for visas for certain advanced STEM graduates, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 2015

Mr. CAPUANO introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend the Immigration and Nationality Act to provide for visas for certain advanced STEM graduates, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-  
2 tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as—

- 5                     (1) the “Best Return on America’s Investment  
6                     Now Act”; or  
7                     (2) the “BRAIN Act”.

## 1 SEC. 2. IMMIGRANT VISAS FOR CERTAIN ADVANCED STEM

## 2 GRADUATES.

3 (a) PREFERENCE ALLOCATION FOR EMPLOYMENT-  
4 BASED IMMIGRANTS.—Section 203(b) of the Immigration  
5 and Nationality Act (8 U.S.C. 1153(b)) is amended—6 (1) by redesignating paragraph (6) as para-  
7 graph (7); and8 (2) by inserting after paragraph (5) the fol-  
9 lowing:10 “(6) ALIENS HOLDING DOCTORATE DEGREES  
11 FROM U.S. DOCTORAL INSTITUTIONS OF HIGHER  
12 EDUCATION IN SCIENCE, TECHNOLOGY, ENGINEER-  
13 ING, OR MATHEMATICS.—14 “(A) IN GENERAL.—Visas shall be made  
15 available, in a number not to exceed 10 percent  
16 of such worldwide level, to qualified immigrants  
17 who—18 “(i) hold a doctorate degree in a field  
19 of science, technology, engineering, or  
20 mathematics from a United States doctoral  
21 institution of higher education; and22 “(ii) have taken all doctoral courses in  
23 a field of science, technology, engineering,  
24 or mathematics, including all courses taken  
25 by correspondence (including courses of-  
26 fered by telecommunications) or by dis-

tance education, while physically present in the United States.

“(B) DEFINITIONS.—For purposes of this paragraph:

“(i) The term ‘distance education’ has the meaning given such term in section 103 of the Higher Education Act of 1965 (20 U.S.C. 1003).

“(ii) The term ‘field of science, technology, engineering, or mathematics’ means a field included in the Department of Education’s Classification of Instructional Programs taxonomy within the summary groups of computer and information sciences and support services, engineering, mathematics and statistics, and physical sciences.

“(iii) The term ‘United States doctoral institution of higher education’ means an institution that—

“(I) is described in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)) or is a proprietary institution of higher edu-

1 cation (as defined in section 102(b) of  
2 such Act (20 U.S.C. 1002(b))); and

3 “(II) was classified by the Car-  
4 negie Foundation for the Advance-  
5 ment of Teaching on January 1,  
6 2012, as a doctorate-granting univer-  
7 sity with a very high or high level of  
8 research activity or classified by the  
9 National Science Foundation after the  
10 date of enactment of this paragraph,  
11 pursuant to an application by the in-  
12 stitution, as having equivalent re-  
13 search activity to those institutions  
14 that had been classified by the Car-  
15 negie Foundation as being doctorate-  
16 granting universities with a very high  
17 or high level of research activity.”.

18 (b) PROCEDURE FOR GRANTING IMMIGRANT STA-  
19 TUS.—Section 204(a)(1)(E) of such Act (8 U.S.C.  
20 1154(a)(1)(E)) is amended—

21 (1) by striking “(E)” and inserting “(E)(i)”;  
22 (2) by striking “203(b)(1)(A),” and inserting  
23 “203(b)(1)(A) or 203(b)(6),”;  
24 (3) by striking “Attorney General” and insert-  
25 ing “Secretary of Homeland Security”; and

1                             (4) by adding at the end the following:

2                                 “(ii) The following processing standards  
3                             shall apply with respect to petitions under  
4                             clause (i) relating to alien beneficiaries qual-  
5                             fying under section 203(b)(6):

6                                 “(I) The Secretary of Homeland Secu-  
7                             rity shall adjudicate such petitions not  
8                             later than 60 days after the date on which  
9                             the petition is filed. In the event that addi-  
10                             tional information or documentation is re-  
11                             quested by the Secretary during such 60-  
12                             day period, the Secretary shall adjudicate  
13                             the petition not later than 30 days after  
14                             the date on which such information or doc-  
15                             mentation is received.

16                                 “(II) The petitioner shall be notified  
17                             in writing within 30 days of the date of fil-  
18                             ing if the petition does not meet the stand-  
19                             ards for approval. If the petition does not  
20                             meet such standards, the notice shall in-  
21                             clude the reasons therefore and the Sec-  
22                             retary shall provide an opportunity for the  
23                             prompt resubmission of a modified peti-  
24                             tion.”.

1       (c) SKILLED WORKERS, PROFESSIONALS, AND  
2 OTHER WORKERS.—Section 203(b)(3)(A) of such Act (8  
3 U.S.C. 1153(b)(3)(A)) is amended by striking “28.6” and  
4 inserting “25.74”.

5       (d) GAO STUDY.—Not later than June 30, 2018, the  
6 Comptroller General of the United States shall provide to  
7 the Congress the results of a study on the use by the Na-  
8 tional Science Foundation of the classification authority  
9 provided under section 203(b)(6)(B)(iii)(II) of the Immig-  
10 ration and Nationality Act (8 U.S.C.  
11 1153(b)(6)(B)(iii)(II)), as added by this section.

12       (e) EFFECTIVE DATE.—The amendments made by  
13 this section shall take effect on October 1, 2016, and shall  
14 apply with respect to fiscal years beginning on or after  
15 such date. Nothing in the preceding sentence shall be con-  
16 strued to prohibit the Secretary of Homeland Security  
17 from accepting before such date petitions under section  
18 204(a)(1)(E) of the Immigration and Nationality Act (8  
19 U.S.C. 1154(a)(1)(E)) relating to alien beneficiaries qual-  
20 fying under section 203(b)(6) of such Act (8 U.S.C.  
21 1153(b)(6)) (as added by this section).

1   **SEC. 3. NUMERICAL LIMITATION TO ANY SINGLE FOREIGN**

2                   **STATE.**

3       (a) IN GENERAL.—Section 202(a)(2) of the Immigra-  
4      tion and Nationality Act (8 U.S.C. 1152(a)(2)) is  
5      amended—

6                  (1) by striking “subsections (a) and (b)” and  
7                  inserting “subsection (a), and paragraphs (3), (4),  
8                  and (5) of subsection (b),”;

9                  (2) by striking “such subsections” and inserting  
10                 “such provisions”.

11       (b) RULES FOR EMPLOYMENT-BASED IMMIGRATION  
12      GRANTS.—Section 202(a)(5) of such Act (8 U.S.C.  
13      1152(a)(5)) is amended—

14                 (1) in subparagraph (A), by striking “(1), (2),  
15                 (3), (4), or (5)” and inserting “(3), (4), or (5)”; and

16                 (2) in subparagraph (B)—

17                         (A) by inserting “paragraphs (3), (4), and  
18                         (5) of” before “section 203(b) exceeds”; and

19                         (B) by striking “section 203(b) consistent”  
20                         and inserting “such paragraphs consistent”.

21       (c) SPECIAL RULES FOR COUNTRIES AT CEILING.—  
22      Section 202(e) of such Act (8 U.S.C. 1152(e)) is amend-  
23      ed—

24                 (1) by striking “subsections (a) and (b)” each  
25                 place such term appears and inserting “subsection

1       (a), and paragraphs (3), (4), and (5) of subsection  
2       (b); and

3               (2) by striking “(1) through (5)” and inserting  
4       “(3), (4), and (5)”.

5       (d) EFFECTIVE DATE.—The amendments made by  
6   this section shall take effect on October 1, 2016, and shall  
7   apply with respect to fiscal years beginning on or after  
8   such date.

9 **SEC. 4. PERMANENT PRIORITY DATES.**

10      (a) IN GENERAL.—Section 203 of the Immigration  
11   and Nationality Act (8 U.S.C. 1153) is amended by add-  
12   ing at the end the following:

13       “(i) PERMANENT PRIORITY DATES.—

14               “(1) IN GENERAL.—Subject to subsection  
15       (h)(3) and paragraph (2), the priority date for any  
16   employment-based petition shall be the date of filing  
17   of the petition with the Secretary of Homeland Secu-  
18   rity (or the Secretary of State, if applicable), unless  
19   the filing of the petition was preceded by the filing  
20   of a labor certification with the Secretary of Labor,  
21   in which case that date shall constitute the priority  
22   date.

23               “(2) SUBSEQUENT EMPLOYMENT-BASED PETI-  
24   TIONS.—Subject to subsection (h)(3), an alien who  
25   is the beneficiary of any employment-based petition

1       that was approvable when filed (including self-peti-  
2       tioners) shall retain the priority date assigned with  
3       respect to that petition in the consideration of any  
4       subsequently filed employment-based petition (in-  
5       cluding self-petitions).”.

6       (b) EFFECTIVE DATE.—The amendment made by  
7       subsection (a) shall take effect on October 1, 2016, and  
8       shall apply to aliens who are a beneficiary of a classifica-  
9       tion petition pending on or after such date.

